

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

GERALD J. ADAMS,

Plaintiff,

v.

CAROLYN W. COLVIN,
Commissioner Social Security,

Defendant.

Case No. 3:12-cv-00829-HU

ORDER

Max Rae, P.O. Box 97303, Salem, OR 97303. Attorney for Plaintiff.

S. Amanda Marshall, United States Attorney, Adrian L. Brown, Assistant United States Attorney, 1000 S.W. Third Avenue, Suite 600, Portland, OR 97204, David Morado, Regional Chief Counsel, Region X, Seattle, and Christopher J. Brackett, Special U.S. Attorney, Office of General Counsel, 701 Fifth Avenue, Suite 2900 M/S 221A, Seattle, WA 98104. Attorneys for Defendant.

United States Magistrate Judge Dennis J. Hubel issued Findings and Recommendation in this case on August 19, 2013. Dkt. 23. Judge Hubel recommended that the Commissioner's decision be reversed on the grounds that the record contains substantial evidence that Plaintiff Gerald J. Adam ("Plaintiff") is disabled, and the case be remanded for the payment of benefits. No party has filed objections.

Under the Federal Magistrates Act ("Act"), the court may "accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C.

§ 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) ("There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate's report[.]"); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (the court must review *de novo* magistrate's findings and recommendations if objection is made, "but not otherwise").

Although review is not required in the absence of objections, the Act "does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard." *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that "[w]hen no timely objection is filed," the court review the magistrate's findings and recommendations for "clear error on the face of the record."

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Judge Hubel's Findings and Recommendation for clear error on the face of the record. No such error is apparent. Accordingly, the Court **ADOPTS** Judge Hubel's Findings and Recommendation, Dkt. 23. The Commissioner's decision (Dkt. 13-3 at 17-35) is reversed. Plaintiff's appeal (Dkt. 1) is granted and this case is remanded for payment of benefits.

IT IS SO ORDERED.

DATED this 11th day of September, 2013.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge